

Decision **DRAFT DECISION OF COMMISSIONER PEEVEY** (Mailed 2/21/06)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish
Consumer Rights and Consumer Protection Rules
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR FURTHER
CONTRIBUTIONS TO DECISION 04-05-057**

Summary

This decision grants \$112,764.82 in intervenor compensation to The Utility Reform Network (TURN) for its further contributions to Decision (D.) 04-05-057. This is approximately \$23,700 less than TURN requested.

Background

On May 27, 2004, the Commission issued D.04-05-057, *Interim Decision Issuing General Order 168, Rules Governing Telecommunications Consumer Protection*. Following appeals, the Commission on August 19, 2004 issued D.04-08-056, its *Order Denying Motions for Stay of Decision 04-05-057*, and on October 7, 2004, D.04-10-013, *Order Modifying and Denying Applications for Rehearing of Decision 04-05-057*.

In September 2004, two separate complaints seeking to overturn D.04-05-057 were filed in federal court.¹ TURN, Utility Consumers Action Network, and National Consumer Law Center, three consumer groups that had made substantial contributions to D.04-05-057, joined together to obtain outside counsel and begin the process of formally intervening in the federal litigation, and, on December 9, 2004, filed their motions to intervene in both cases. On December 15, 2004, TURN filed a Supplemental Notice of Intent (NOI) to Claim Intervenor Compensation with the Commission on behalf of the three joint participants. On January 7, 2005, the plaintiff carriers filed first amended complaints in response to the defendants' motions to dismiss both court cases.

On January 27, 2005, the Commission issued D.05-01-058 staying D.04-05-057 pending further examination of whether General Order 168 provided a consumer protection structure that could be reasonably implemented, adequately enforced, and viable in the longer term. The following day, the plaintiffs in each of the federal actions filed Notices of Voluntary Dismissal, bringing those actions to a close. On March 29, 2005, TURN followed up with the supplemental compensation request we address today, seeking to recover fees and costs incurred during the federal litigation effort.²

¹ *Cellco Partnership v. Peevey*, No. SACV 04-1139; and *Nextel of California, Inc. v. Brown*, No. SACV 04-1229.

² According to TURN, this Request for Compensation includes the total costs of the outside counsel jointly retained by the three groups, but only TURN's staff costs and directly-incurred expenses for work on the federal litigation.

Under Pub. Util. Code § 1804(c),³ within 30 days after service of a request for compensation, the Commission staff or any other party may file a response, and under Rule 76.75, the customer may file a reply to a response within 15 days after service of the response. In this case, Verizon Wireless, T-Mobile, Cingular Wireless, Nextel of California, Inc., and Sprint Telephony PCS, L.P. and Sprint Spectrum L.P., as Agent for WirelessCo, L.P. (jointly, “Carriers”) filed a joint response, and TURN filed its reply. Both the response and reply were timely.

Requirements for Awards of Compensation

The intervenor compensation program enacted in §§ 1801-1812 establishes a mechanism for reimbursing public utility customers for their reasonable costs of participation in Commission proceedings if they make a substantial contribution to the Commission’s decision. All of these procedures must be followed and criteria satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including filing a sufficient notice of intent to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction; a representative who has been authorized by a customer; or a representative of a group or organization authorized to represent the interests of residential customers. (§ 1802(b).)
3. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)

³ All statutory references are to the Public Utilities Code.

4. The intervenor should file and serve a request for a compensation award within 60 days of a final order or decision in a hearing or proceeding. (§ 1804(c).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs must be reasonable and comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

We evaluate TURN's compliance with these criteria below.

Procedural Requirements

Because no prehearing conference was held, the assigned Administrative Law Judge (ALJ) on March 20, 2000 issued a ruling setting a June 2, 2000 NOI filing deadline, 30 days after the first round of reply comments was due. On May 19, 2000, the ALJ issued a subsequent ruling extending the date for reply comments and at the same time extended the NOI deadline to September 14, 2000. TURN timely filed its NOI on September 14, 2000. On October 6, 2000, the assigned ALJ ruled that TURN met the financial hardship condition through a rebuttable presumption of eligibility, pursuant to §1804(b)(1), because TURN met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated January 7, 2000, in Application 99-10-023). TURN qualifies as a customer, pursuant to §1802(b)(1)(C), as it is a formally organized group authorized to represent the interests of residential customers.

TURN received two previous awards of compensation in this proceeding for its substantial contributions to our earlier decisions.⁴ Although not required to do so, on December 15, 2004, TURN filed a Supplemental NOI to Claim Compensation to update the scope of its original NOI filed in 2000, and to state its intent to seek compensation for its federal court work in this matter. As a customer found eligible for an award of compensation in one phase of a proceeding, TURN remains eligible in later phases, including any involving rehearing.⁵

Under § 1804(c), a request for compensation is to be filed within 60 days of the issuance of a final order or decision by the Commission. Neither the Public Utilities Code nor the Commission's Rules of Practice and Procedure provide a filing deadline for a request for compensation triggered by a court decision involving judicial review. We agree with TURN that the January 28, 2005 Notices of Voluntary Dismissal in each separate federal District Court proceeding were an appropriate trigger of the 60-day filing period. TURN's Request for An Award of Compensation was timely filed on March 29, 2005, within 60 days of that date. TURN has met all of the procedural requirements necessary to request compensation.

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt

⁴ D.02-04-007 for contributions to D.01-07-030, and D.04-12-054 for contributions to D.04-05-057.

⁵ Rules of Practice and Procedure, Rule 76.76.

one or more of the factual or legal contentions or specific policy or procedural recommendations put forward by the customer?⁶ Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision?⁷ Assessment of whether the customer made a substantial contribution as described in § 1802(i) requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁸

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the Commission's judgment, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.⁹

⁶ See § 1802(i).

⁷ See § 1802.5.

⁸ D.98-04-059, 79 CPUC2d 628 at 653.

⁹ See D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case

Footnote continued on next page

A customer found eligible to seek intervenor compensation may remain eligible to seek additional compensation even after the Commission has issued its order: under § 1802(a), an eligible customer's participation in the judicial review process may give rise to compensable claims.¹⁰ In that event, the Commission may determine that the prerequisite "substantial contribution" was satisfied by the customer's substantial contribution to the earlier order that was the subject of judicial review.¹¹ Further, this is true for judicial review in federal as well as state courts, and the intervenor need not have initiated that judicial review to be found to have participated in "obtaining judicial review" as contemplated in § 1802(a).

Here, TURN seeks compensation to recover fees and costs incurred during the short-lived federal litigation, described above, in which the plaintiff carriers sought to overturn the consumer protection rules adopted in D.04-05-057 on preemption and a variety of other federal law claims.

because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

¹⁰ "'Compensation' means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any." (§ 1802(a).)

¹¹ "It is true ... that the Intervenor Compensation Provisions were designed to compensate customers who make a 'substantial contribution' to PUC proceedings. (§ 1801.3, subd. (d).) Indeed, making a substantial contribution is a prerequisite to an award of compensation. (§ 1803.) However, once a customer makes such a contribution to a PUC proceeding, that customer may obtain compensation for the fees and costs of obtaining judicial review, regardless whether that judicial review work made a substantial contribution to the PUC proceeding." *Southern California Edison Co. v. CPUC*. (2004) 117 Cal.App.4th 1039, 12 Cal.Rptr.3d 441, 449-450.

In their joint response, the Carriers object to TURN's claim on the grounds that TURN's involvement in the federal court's judicial review was limited to filing a motion to intervene that was never ruled on by the court, and a reply brief in support of that motion, and preparing a motion to dismiss that was never filed. "Because the District Court never granted or even held a hearing on TURN's motion to intervene, TURN was not a party to the federal lawsuit and therefore did not participate in judicial review of the Commission's decision."¹² This was so, however, only because the plaintiffs voluntarily withdrew their suits before the District Court acted.

According to the Carriers, "limiting compensation to groups that achieve party status in judicial proceedings comports with the legislature's intent."¹³ We disagree. In fact, TURN's work here sought to defend a Commission decision to which TURN and the other consumer groups had made substantial contributions. The Legislature has directed the Commission in § 1801.3(b), "The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." We would not be doing so if we were to accept the Carriers' argument. As we recently noted in another proceeding, the California Court of Appeal has supported an award of intervenor compensation to parties seeking to defend a Commission decision in which they had prevailed.

The California Court of Appeal also noted "the legislative mandate to interpret the statutory provisions to encourage

¹² Carriers' Response, page 3.

¹³ Carriers' Response, page 4.

effective intervenor participation. (Sec. 1803(b).) If an intervenor cannot gain compensation to defend a Commission decision in which the intervenor prevailed, the intervenor's effectiveness is severely limited." (*SCE v. PUC, supra*, 117 Cal. App. 4th 1039, 1050 - 1051, quoting from D.03-04-034, slip op. at p. 6.) "The Legislature recognized, however, that a decision by the PUC is not necessarily the final word on a matter, and saw fit to assist customers who wished to continue advocating their positions after the PUC has issued a decision." (*Id.* at p. 1049.)¹⁴

That is TURN's situation here. Also, by objecting that TURN did not achieve party status, the Carriers urge an unsupportably narrow interpretation of the § 1802(a) definition of "compensation." A more complete reading of § 1802(a) shows that it is not simply "participation in" a proceeding (including judicial review flowing from that proceeding), but "*preparation for and participation in*" [emphasis added] a proceeding that may give rise to compensable work. The effort TURN put into preparing to intervene in judicial review was as essential to successfully defending its contributions as its subsequent participation would have been had the plaintiff carriers not first amended and later withdrawn their lawsuits, and that preparation should be compensable if TURN meets the other criteria for compensation.

The Carriers have not shown that a motion to dismiss was illogical and inappropriate to prepare in these circumstances. Further, the Carriers have not shown that it was unreasonable for TURN to incur fees and costs in connection with the motion and brief that were filed or the motion to dismiss that was in preparation as of the date of dismissal. The Carriers' main argument, that TURN's motion to intervene had not yet been granted, is unpersuasive. The

¹⁴ D.05-01-059, page 9.

court had not acted on the motion one way or the other, and in light of TURN's recent successful intervention in federal litigation brought by certain energy utilities, TURN had no reason to believe the court would reject its motion to intervene.

As TURN points out, the Carriers' attempt to shift to intervenors the risk that the judicial review initiated by others in federal court might unexpectedly end for reasons beyond the control of the intervenor participating in that judicial review. Such an outcome would make intervenors reluctant to participate in judicial review, as recognized by both the Commission and the Court of Appeal. It would also be inconsistent with a series of Commission decisions recognizing that the risk of unanticipated dismissal should not be assigned to intervenors. The Commission has several times awarded intervenor compensation despite the fact that the underlying proceeding was dismissed due to circumstances beyond the Commission's or the intervenor's control.

Denying TURN any compensation in this proceeding simply because circumstances beyond its control led to dismissal of the application would be both unfair and inconsistent with the intent of the intervenor compensation statutes. Moreover, doing so could potentially discourage it from participating in future proceedings. We value the continued participation of intervenors like TURN as evidenced by our frequent decisions awarding it compensation for its assistance to our decisionmaking process. Finally, if we were to deny compensation here because there was no decision or order addressing the merits of TURN's substantive participation, we could create an inappropriate incentive for intervenors to argue for the continued processing of cases even where discontinuation of the proceeding is the better outcome.

The intervenor compensation program is not structured to provide an intervenor with full assurance of being reimbursed

for its costs of participation. Each time an intervenor such as TURN decides to participate in a given proceeding, it assumes the risk that its costs of participation therein will not be fully reimbursed. That risk is a part of the intervenor compensation program and is appropriate to ensure that the intervenor's conduct is calculated to assist the Commission in carrying out its public duties. *We see no reason to increase the intervenor's risk by denying any compensation in a proceeding that is prematurely terminated for reasons that are not reasonably foreseen and are beyond its control.*¹⁵ [emphasis added]

The same reasoning applies even more forcefully here, as TURN and the intervenors with whom it jointly participated have already been found to have made substantial contributions to D.04-05-057,¹⁶ and it was the judicial review of that decision that was dismissed due to circumstances beyond their control.

We conclude that TURN has met the "substantial contribution" test here, subject to an important caveat that we discuss later ("Special Concerns Regarding Judicial Review").

Reasonableness of Requested Compensation

The components of a claimant's request must constitute reasonable fees and costs of the claimant's preparation for and participation in the proceeding. Only those fees and costs associated with the claimant's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation. We first assess whether the hours and non-labor expenses TURN charged for its compensable efforts are reasonable, and then we

¹⁵ D.02-08-061, pages 7-8. *See also*, D.03-06-065, page 6.

¹⁶ D.04-12-054 (Opinion Granting Intervenor Compensation for Substantial Contributions to Decision 04-05-057), Finding of Fact 3.

determine whether the hourly rates claimed are commensurate with market rates for similar services from comparably qualified persons.

TURN made minor arithmetic errors in its supplemental claim. TURN's supplemental claim is tabulated in summary form below just as TURN presented it. In the award set forth later, we correct for TURN's arithmetic errors and reduce certain hourly rates.

TURN's Supplemental Claim

Name	Expertise	Year	Hours	Rate	Amount
TURN Staff					
Christine Mailloux	Attorney	2004	22.5	\$310	\$ 7,312.50
		2005	4.75	340	1,710.00
Robert Finkelstein	Attorney	2004	4.75	395	1,876.00
		2005	12	197.50*	2,370.00
Outside Counsel					
Michael Strumwasser	Attorney	2004/2005	21.2	550	11,660.00
Gregory Luke	Attorney	2004/2005	146	425	62,050.00
Zahirah Washington	Attorney	2004/2005	206.6	225	46,485.00
Subtotal Counsel					133,463.75
TURN Expenses					44.51
S&W Expenses					2,949.81
Subtotal Expenses					2,994.32
Total Claim					\$136,458.07

*Claim preparation rate

Reasonableness of Hours and Expenses

TURN submitted detailed daily time logs to support its hours. For each day, it logged the date and the representative, the number of hours, and the activity in which the representative engaged. We have examined TURN's hours,

expenses and other documentation, and we agree its hours are reasonable for the purpose of preparing for and intervening in the federal litigation that constituted, or would have constituted, judicial review of D.04-05-057. As discussed earlier, Turn's motions to intervene and supporting briefs, and its preparatory work for a motion to dismiss, were all reasonable and appropriate under the circumstances. We note that TURN properly reduced by one-half its attorney charge for preparing this compensation request, and excluded from the claim its hours and expenses associated with earlier awards already received in this proceeding.

Likewise, TURN's non-labor charges are commensurate with the efforts described in this supplemental intervenor compensation claim.

Market Rate Standard

For its staff attorneys, TURN asks the Commission to apply hourly rates approved in earlier proceedings, or updated rates from the rulemaking to set intervenor compensation rates for calendar year 2005.¹⁷

TURN requests rates of \$310 for work in 2004 and \$340 in 2005 for staff attorney Mailloux. In D.04-12-054, our earlier compensation decision in this proceeding, we awarded TURN \$325 hourly for Mailloux's 2004 work. All of her work here was done between October 2004 and January 2005, so we will continue to apply the \$325 rate in this phase.

¹⁷ D.05-11-031, issued subsequent to TURN's compensation request, authorized no general hourly rate increases for 2005 work above rates previously authorized for 2004 (Rulemaking 04-10-010).

TURN requests an hourly rate of \$395 for Finkelstein's work performed in 2004 and early-2005. In D.05-03-016, we awarded Finkelstein this same rate for 2004 work, so we approve it for his work here as well.

TURN requests an hourly rate of \$550 for outside counsel Strumwasser's work performed at the end of 2004 and beginning of 2005. In D.05-11-031, we set the range of rates for 2004 work for intervenor attorneys with more than twelve years experience at \$270-\$490/hour. In D.05-04-049, we awarded Strumwasser \$470 per hour for work in 2004 in another judicial review case. This rate is near the top of the authorized range, and we continue it here for both years.

For outside counsel Luke, TURN is requesting a \$425 hourly rate. Luke is new to Commission proceedings. He has eleven years experience since law school, including work for the American Civil Liberties Union, three years with the National Voting Rights Institute, two years in private practice, and experience clerking for the Chief Judge of the U.S. District Court in the Virgin Islands. The range of rates in D.05-11-031 for 2004 work for intervenor attorneys with eight to twelve years experience is \$270-\$325/hour. Recognizing Luke's varied and unique experience, we will award \$325, the top of the range, for Luke's work in late-2004 and early-2005.

For outside counsel Washington, TURN is requesting an hourly rate of \$225 for 2004 and 2005. Washington graduated from law school in 2002, interned with the U.S. Environmental Protection Agency, clerked at the National Resources Defense Council in New York, and served in the NRDC's Southern California office before joining Strumwasser & Woocher. The top of the rate range in D.05-11-031 for 2004 work for intervenor attorneys with less than five years experience is \$190/hour. In D.04-12-033, we awarded TURN \$190 for Hayley Goodson, who has similar years of experience. Considering

Washington's qualifications, we will award a rate of \$190 for his work in 2004 and 2005.

Having examined TURN's claimed hours, hourly rates, and expenses, we find the amounts TURN claims for intervenor compensation, as adjusted and corrected for arithmetic errors, reasonable. Again, this finding is subject to the important caveat we voice at the end of today's decision regarding intervenors' budgets for judicial review

TURN's Award

We award TURN \$112,764.82, as summarized in the table below.

TURN's Award

Advocate	Year	Hours	Rate	Amount
Mailloux	2004	22.5	\$325	\$ 7,312.50
	2005	4.75	325	1,543.75
Finkelstein	2004	4.25	395	1,678.75
	2005	6.5	395	2,567.50
Strumwasser	2004	15.5	470	7,285.00
	2005	5.7	470	2,679.00
Luke	2004	85.4	325	27,755.00
	2005	60.6	325	19,695.00
Washington	2004	136.8	190	25,992.00
	2005	69.8	190	13,262.00
TURN Expenses				44.51
S&W Expenses				2,949.81
Total Award				\$ 112,764.82

Consistent with previous Commission decisions, we order interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15 be paid on the award amount, commencing June

12, 2005, the 75th day after TURN filed its compensation request, and continuing until full payment is made.¹⁸

TURN suggests the award be assessed against the carriers that initiated the federal court litigation. However, this is a quasi-legislative rulemaking proceeding affecting the entire regulated telecommunications industry. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020.

We remind TURN that Commission staff may audit its records related to intervenor compensation awards and that it must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Those records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed.

Special Concerns Regarding Judicial Review

Today's decision grants TURN's entire request, with the exceptions already discussed. However, we have several concerns regarding the request, and we therefore strictly limit today's decision to the facts presented. Our concerns relate both to substantial contribution and reasonableness. We discuss them below.

¹⁸ TURN filed its supplemental request on March 29, 2005.

**Substantial Contribution and Public
Utilities Code Section 1802.5**

When an intervenor takes the same position as another party in the same proceeding, the intervenor's showing must supplement, complement, or contribute to that of the other party in order to constitute a substantial contribution to our decision adopting the position. See § 1802.5. In our recently instituted rulemaking on intervenor compensation (R.06-04-022), we proposed that § 1802.5 should also apply to compensation requests for work performed in obtaining judicial review.

The record here is inadequate for us to find one way or the other whether TURN's federal court work would have supplemented, complemented, or contributed to the Commission's own work in defending the decision under review. The court filings that normally would have provided us with an adequate record did not occur, given the carriers' dismissals of their two suits. We also note that we instituted R.06-04-022 long after TURN filed this compensation request. In these circumstances, which are unlikely to be repeated, we will not disallow TURN's request for failure to satisfy § 1802.5.

**Reasonableness and Intervenors'
Judicial Review Budgets**

We earlier found that TURN acted reasonably in beginning work on its motions to dismiss without waiting for the court to rule on TURN's motions to intervene. However, we lack a basis for determining the reasonableness of the fees and costs TURN claims.¹⁹

¹⁹ The fees and costs relate to (1) TURN's motions to intervene and its reply brief to the carriers' opposition to the motions to intervene, and (2) TURN's work in preparation of its motions to dismiss.

Again, the indeterminacy arises in large part from something outside TURN's control, namely, the carriers' dismissal of the two suits. TURN never filed its motions to dismiss nor do we know the final price tag for TURN's intervention had the suits been determined on the merits.

As noted earlier, TURN did file a "Supplemental Notice of Intent to Claim Compensation" (dated December 15, 2004) regarding its federal court intervention. Consistent with § 1804(a)(2)(A)(ii), the Supplemental NOI contains an estimated budget. We did not rule on the Supplemental NOI. Such a ruling could have pointed out "similar positions, areas of potential duplication in showings, unrealistic expectation for compensation, and any other matter that may affect the customer's ultimate claim for compensation." See § 1804(b)(2).

The compensation TURN requests is certainly large, but even so the compensation is only slightly more than 25% of the budget presented in the Supplemental NOI. We of course do not know what costs TURN ultimately would have incurred had the carriers not dismissed their federal litigation.

We remain committed to the principle that intervenors should be able to obtain compensation for their efforts on judicial review in defending their substantial contributions to Commission decisions. We must constrain compensation, however, to only those costs shown to be reasonable, and we have made several proposals in R.06-04-022 intended to give us more effective control of litigation budgets while reducing the uncertainties that intervenors currently face.

Taking all the circumstances into consideration, including the uniqueness of those circumstances, we will grant TURN's compensation request despite our concerns regarding the reasonableness of the request. The carriers' voluntary dismissal leaves us with much less than the usual record on which to base our

finding of reasonableness, and while we find disturbingly large both TURN's proposed budget and the amount it had already spent, we also recognize that TURN had to make its litigation plans without the benefit of a ruling on its Supplemental NOI or the proposals in R.06-04-022. Thus, except for the adjustment to the hourly rates requested, we make no disallowance to TURN's requested compensation for failure to demonstrate reasonableness.

Nevertheless, we put all intervenors on notice that we intend to adopt fair but strict standards for constraining intervenors judicial review budgets. The need for such standards is clear. Normally, attorneys are responsible to their clients for establishing and staying within their litigation budgets. In contrast, the general body of ratepayers, who ultimately pay intervenor compensation awards, are not able to exert this control over their intervenor representatives. The intervenor compensation statute requires us to determine the reasonableness of intervenor compensation costs, and given the size of the budgets we have seen for judicial review (in excess of \$500,000), we conclude that after-the-fact review of these costs does not well serve either ratepayers or intervenors.

Comment Period

This is an intervenor compensation matter. Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment may be reduced or waived. In this instance, the usual comment period²⁰ was permitted in light of the complexity of the issues raised. TURN filed timely comments on March 13, 2006. There were no replies to TURN's comments. We have reviewed TURN's comments and

²⁰ Rules 77.2 and 77.5.

made several changes to the draft decision, changing the award and adding the section entitled “Special Concerns Regarding Judicial Review.”

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner in this proceeding and James McVicar is the assigned ALJ.

Findings of Fact

1. TURN filed a timely NOI and was found eligible to claim compensation in this proceeding.
2. TURN filed a timely request for compensation.
3. TURN has made further substantial contributions to D.04-05-057, as described herein, except that TURN’s showing is incomplete regarding § 1802.5. The incompleteness derives chiefly from factors beyond TURN’s control.
4. The hourly rates for TURN’s attorneys as adjusted herein are reasonable when compared to the market rates for persons with similar training and experience.
5. Due to factors beyond TURN’s control, we have much less than the usual record on which to base our finding of reasonableness. The number of hours TURN has claimed for its attorneys is reasonable for the tasks performed, but it is not clear that TURN’s budget for judicial review is reasonable.
6. The non-labor expense amounts TURN has claimed are reasonable.
7. The reasonable compensation for TURN’s contributions to D.04-05-057 is \$112,764.82.
8. The Appendix to the Opinion summarizes this award.
9. TURN’s award should be paid from the Commission’s intervenor compensation program fund described in D.00-01-020.

Conclusions of Law

1. Given the concerns stated in today's decision, the Commission should adopt standards regarding § 1802.5 and the reasonableness of litigation budgets in the context of intervenors' participation in judicial review. Such standards are under consideration in R.06-04-022.

2. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation as set forth herein for its costs incurred in making further substantial contributions to D.04-05-057.

3. TURN should be awarded \$112,764.82 for its contribution to D.04-05-057.

4. Due to the unique circumstances, as discussed in the foregoing Opinion, today's decision is limited to the facts presented.

5. This decision should be made effective immediately.

O R D E R**IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$112,764.82 as compensation for its further substantial contributions to Decision 04-05-057.

2. TURN's award shall be paid within 30 days of the effective date of this decision from the intervenor compensation program fund described in Decision 00-01-020. Payment shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on June 12, 2005, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0405057
Proceeding(s):	R0002004
Author:	ALJ McVicar
Payer(s):	Commission

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason for Change/Disallowance
The Utility Reform Network	March 29, 2005	\$136,458	\$112,764.82	No	Failure to justify hourly rate; Arithmetic errors

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Christine	Mailloux	Attorney	The Utility Reform Network	310	2004	325
Christine	Mailloux	Attorney	The Utility Reform Network	340	2005	325
Robert	Finkelstein	Attorney	The Utility Reform Network	395	2004	395
Robert	Finkelstein	Attorney	The Utility Reform Network	395	2005	395
Michael	Strumwasser	Attorney	The Utility Reform Network	550	2004	470
Michael	Strumwasser	Attorney	The Utility Reform Network	550	2005	470
Gregory	Luke	Attorney	The Utility Reform Network	425	2004	325
Gregory	Luke	Attorney	The Utility Reform Network	425	2005	325
Zahirah	Washington	Attorney	The Utility Reform Network	225	2004	190
Zahirah	Washington	Attorney	The Utility Reform Network	225	2005	190